

1 (c) Except as may be expressly set forth in this paragraph 18, nothing  
2 contained in this Lease shall be construed to require Tenant to operate the Premises continuously  
3 but if used, such use will be in compliance with (a) or (b) above. Tenant shall be permitted to  
4 conduct temporary outdoor promotional sales on the Common Areas on Landlord's Premises  
5 only if (and only to the same extent as) other tenants or occupants of the buildings within the  
6 Shopping Center are permitted to conduct such sales. Tenant shall be permitted to conduct  
7 temporary outdoor promotional sales on the sidewalk area immediately in front of Tenant's  
8 Premises, provided (i) Tenant is then operating as a Circuit City Superstore; (ii) any such  
9 outdoor sales displays allow at least a five foot (5') clear pedestrian pathway along the entirety of  
10 said sidewalk area; and (iii) any such temporary outdoor promotional sales are conducted in a  
11 professional manner (i.e.: consistent with the operation of a first-class retail power center).

12 19. Warranties, Representations and Covenants.

13 (a) Landlord represents, warrants and covenants to Tenant that:

14 (i) Quiet and Peaceful Enjoyment. Tenant shall have quiet and  
15 peaceful use, enjoyment and occupancy of the Premises.

16 (ii) Title. As of the date of this Lease, Landlord's fee simple interest  
17 in the Shopping Center is free and clear of any mortgages, deeds, encumbrances, declarations,  
18 easements, agreements; leases, tenancies or restrictions, except the RBA and those matters set  
19 forth on Exhibit "F" attached hereto and entitled "Permitted Encumbrances", or any other  
20 encumbrances which would restrict Tenant's use of the Building for the sale of Products or  
21 would restrict in any respect the right of Tenant, its employees, customers and invitees to use the  
22 Common Areas in accordance with the terms of this Lease. Landlord specifically covenants and  
23 warrants that, subject to the exclusives granted to other occupants of the Shopping Center set  
24 forth on Exhibit "F", no third party, including but not limited to any other occupant of the  
25 Shopping Center, has the right to object to Tenant's tenancy hereunder (including, specifically,  
26 its right to exercise the rights granted under this Lease and to operate its business in the  
27 Premises), or to prohibit the selling, renting, servicing, repairing or warehousing of the Products,

1 or the right to consent to any feature of the Improvements or Tenant's signage. The  
2 representations, warranties, indemnifications and covenants contained in this paragraph are a  
3 material inducement to Tenant's execution of this Lease.

4 (iii) Certificate of Authority. Landlord covenants that it is a duly  
5 constituted general partnership under the laws of the State of Ohio, and that its authorized agent  
6 who is acting as its signatory in this Lease is duly authorized and empowered to act for and on  
7 behalf of the general partnership. Landlord has furnished Tenant prior hereto with evidence of  
8 (a) the existence of the general partnership, and (b) the authority of the agent to bind the general  
9 partnership as contemplated herein.

10 (iv) No Litigation. As of the date of this Lease, there are no judicial,  
11 quasi judicial, administrative or other orders, injunctions, moratoria or pending proceedings  
12 against Landlord or the Shopping Center which preclude or interfere with, or would preclude or  
13 interfere with, the construction contemplated herein or the occupancy and use of the Premises for  
14 the purposes herein contemplated.

15 (v) Hazardous or Toxic Materials. To the best of Landlord's  
16 knowledge, Landlord has not used, discharged, dumped, spilled or stored any Hazardous  
17 Substances (as defined in paragraph 1(a) of the Construction Provisions) on or about the  
18 Shopping Center, whether accidentally or intentionally, and has received no notice and has no  
19 knowledge that any such condition exists at the Shopping Center. If any claim is ever made  
20 against Tenant by any third party (including, without limitation, any governmental agency)  
21 relating to Hazardous Substances present at or around the Shopping Center, whether or not such  
22 substances are present as of the date hereof, or any Hazardous Substances are hereafter  
23 discovered at the Shopping Center (unless introduced by Tenant, its agents or employees), all  
24 costs of removal incurred by, all liability imposed upon, or damages suffered by, Tenant because  
25 of the same shall be borne by Landlord, and Landlord hereby indemnifies and agrees to defend  
26 and hold Tenant harmless from and against all such costs, losses, liabilities and damages,  
27 including, without limitation, all third-party claims (including sums paid in settlement thereof  
28 with or without legal proceedings) for personal injury or property damage and other claims,  
29 actions, administrative proceedings, judgments, compensatory and punitive damages, penalties,  
30 fines, costs, losses, attorneys' fees and expenses (through all levels of proceedings), consultants

1 or experts fees and all costs incurred in enforcing this indemnity. The representation, warranty  
2 and indemnity of Landlord described in this paragraph 19(a)(v) shall survive the termination or  
3 expiration of this Lease. Tenant acknowledges that, based solely on the environmental  
4 investigations conducted on its behalf, as of the date of this Lease, it is not aware of the presence  
5 of any Hazardous Substance which Landlord is required to remediate under current law. Tenant  
6 shall not cause or permit any Hazardous Substances to be upon, about, a part of, or beneath the  
7 Premises or the Shopping Center. Subject to Landlord's obligation to indemnify Tenant as set  
8 forth in this paragraph, Tenant shall, at its sole cost and expense, promptly take all actions to  
9 comply fully with all present and future laws concerning Hazardous Substances arising as a  
10 result of Tenant's breach of its obligation contained in the immediately preceding sentence.  
11 Tenant hereby indemnifies and agrees to defend and hold Landlord harmless from and against all  
12 costs, losses, liabilities and damages, including, without limitation, all third-party claims  
13 (including without limitation any governmental agency and including sums paid in settlement  
14 thereof, with or without legal proceedings) for personal injury or property damage, other claims,  
15 actions, administrative proceedings, judgments, or compensatory and punitive damages,  
16 penalties, fines, costs, losses, attorneys' fees and expenses (through all levels of proceedings),  
17 consultants' or experts' fees, and all costs incurred in enforcing this indemnity should Tenant  
18 use, discharge, dump, spill or store or knowingly permit any Hazardous Substance to be used,  
19 discharged, dumped, spilled or stored, upon, about or a part or beneath the Premises or the  
20 Shopping Center. The warranty, indemnity and obligations of Tenant described in this paragraph  
21 shall survive the termination or expiration of this Lease. For purposes of this paragraph,  
22 Hazardous Substances shall not include substances utilized in connection with the maintenance  
23 and operation of Tenant's Building, provided such substances are utilized and stored in  
24 compliance with all applicable environmental laws.

25 (vi) Tenant's Exclusive Use. (A) For purposes of this Lease, an  
26 "Electronic Superstore" shall be a retail facility (including a "wholesale club" or similar concept)  
27 the primary use of which is for the sale of all or substantially all of the following: consumer,  
28 office and/or automotive electronic products (which include, but shall not be limited to,  
29 televisions, stereos, speakers and video and audio recorders and players and cameras and similar  
30 related items).

1 Subject to the rights granted to any tenants or occupants under leases or  
2 agreements in existence as of the date of this Lease and listed on Exhibit F, so long as: (1)  
3 Tenant is not in default of this Lease beyond any applicable cure period (except for any ongoing  
4 bona fide dispute or litigation between the parties), and (2) the Premises is then being used as an  
5 Electronic Superstore, no other tenant or occupant of the Shopping Center having a gross  
6 leasable area in excess of 5,000 square feet shall be entitled to operate as an Electronic  
7 Superstore.

8 Landlord hereby acknowledges that it has reserved the right in its Lease  
9 with Kohl's (which is not otherwise restricted in changing its use), to designate exactly four (4)  
10 specific use restrictions of other tenants or occupants of the Shopping Center which Kohl's may  
11 not violate in the event that Kohl's elects to change its use. Pursuant to the foregoing  
12 acknowledgement, Landlord hereby agrees that, so long as: (1) Tenant is not in default of this  
13 Lease beyond any applicable cure period (except for any ongoing bona fide dispute or litigation  
14 between the parties), and (2) the Premises is then being used as an Electronic Superstore, it shall  
15 designate Tenant's use restriction against the operation of an Electronic Superstore [set forth in  
16 this Section 19(a)(vi)(A) above] a use restriction that Kohl's may not violate in the event that  
17 Kohl's elects to change its use.

18 (B) For the purposes of this Lease, a "Computer Superstore" shall be a  
19 retail facility the primary use of which is for the sale of computer hardware and software and  
20 related software services, including internet access services, such as that operated as of the date  
21 of this Lease by CompUSA. Subject to the rights granted to any tenants or occupants under  
22 leases or agreements in existence as of the date of this Lease and listed on Exhibit F, so long as:  
23 (1) Tenant is not in default of this Lease beyond any applicable cure period (except for any  
24 ongoing bona fide dispute or litigation between the parties), and (2) at least twenty percent (20%)  
25 of the Premises is then being used for the sale of computer hardware and software and related  
26 software services (including internet access services), no tenant or occupant of the Shopping  
27 Center having a gross area in excess of 5,000 square feet shall be entitled to operate as a  
28 Computer Superstore.

29 Landlord hereby acknowledges that it has reserved the right in its Lease with  
30 Kohl's (which is not otherwise restricted in changing its use), to designate exactly four (4)

1 specific use restrictions of other tenants or occupants of the Shopping Center which Kohl's may  
2 not violate in the event that Kohl's elects to change its use. Pursuant to the foregoing  
3 acknowledgement, Landlord hereby agrees that, so long as: (1) Tenant is not in default of this  
4 Lease beyond any applicable cure period (except for any ongoing bona fide dispute or litigation  
5 between the parties), and (2) at least twenty percent (20%) of the Premises is then being used for  
6 the sale of computer hardware and software and related software services (including internet  
7 access services), it shall designate Tenant's use restriction against the operation of a Computer  
8 Superstore [set forth in this Section 19(a)(vi)(B) above] as a use restriction that Kohl's may not  
9 violate in the event that Kohl's elects to change its use.

10 (vii) Zoning and Subdivision. The Premises and the Shopping Center  
11 are presently properly subdivided, in conformity with all applicable laws and zoned so as to  
12 permit (A) the development and operation of the Premises and the Shopping Center in  
13 accordance with the provisions of this Lease; and (B) the initial use of the Premises described in  
14 paragraph 18 of this Lease.

15 (viii) Prohibited Activities.

16 (1) Landlord and Tenant shall not operate or lease (or permit to be operated or leased)  
17 any building or tenant space in the Tenant's Preferred Area or in the Shopping Center, including  
18 the Premises, for use as:

- 19 A. a flea market;
- 20 B. a massage parlor;
- 21 C. a funeral home;
- 22 D. a facility for the sale of paraphernalia for use with illicit drugs.
- 23 E. a facility for the sale or display of pornographic material (as  
24 determined by community standards for the area in which the Shopping Center is  
25 located);
- 26 F. a carnival, amusement park or circus;
- 27 G. a facility for any use which is illegal or dangerous, constitutes a  
28 nuisance or is inconsistent with an integrated, community-oriented retail and  
29 commercial shopping center;
- 30 H. a facility for the sale or rental of used goods (including thrift  
31 shops, secondhand or consignment stores) or any facility selling new or used  
32 merchandise as a wholesale operation, a liquidation operation, odd lots, lot sales,  
33 factory close-outs or imperfect goods (excluding any of such sales as listed in this  
34 subparagraph (H) which are conducted as an incidental part of a retail operation;

I. an off-track betting parlor which is greater than fifteen thousand (15,000) square feet or which utilizes less than one-third (1/3) of its gross leasable area for a restaurant;

J. a gas station, auto repair or body shop; provided, however, the parties specifically acknowledge that Tenant's car stereo installation facility is not included in this subparagraph (J) and the type of operations generally conducted by regional or national automotive parts or tire chains such as, but not limited to, Pep Boys, Western Auto and NTB shall not be in violation of this prohibition; or

K. a facility for the sale of new or used motor vehicles, boats, trailers or mobile homes (the parties specifically acknowledge that the foregoing shall not prohibit a new car dealership if such new car dealership stores and displays all of its inventory within its enclosed premises).

(2) Landlord shall not operate or lease (or permit to be operated or leased) any building or tenant space within three hundred (300) feet (measured from the front entrance of the Building to the front entrance of the space in question) for use as, and Tenant shall not permit the Premises to be used as:

(A) a bar, tavern, pub, nightclub, or dance hall or disco in which less than fifty percent (50%) of its space or revenue is devoted to and derived from food service;

(B) a bowling alley;

(C) a billiard or bingo parlor;

(D) an off-track betting parlor (regardless of size or percentage of restaurant use);

(E) a skating rink;

(F) a laser tag or virtual reality facility, or for the primary use as an arcade or pinball or computer game room (provided that retail facilities may display electronic games or computer games for sale and for entertainment purposes [but said games may be used for entertainment purposes only incidental to another primary use]);

(G) a banquet hall, auditorium or other place of public assembly (except in connection with the operation of a hotel/motel);

(H) a training or educational facility (including, without limitation, a beauty school, barber college, reading room, school or other facility catering primarily to students or trainees rather than customers); or

(I) a theater of any kind.

In addition, no auction, fire or going-out-of-business sale shall be conducted in the Shopping Center.

1 (ix) Site Covenants. With regard to the development of the Shopping  
2 Center and the uses and operations of the Common Areas, Landlord makes the following  
3 representations, warranties and covenants (the "Site Covenants");

4 (A) Building Location. There shall be no expansion of the building labeled  
5 Unit 90 on the Site Plan beyond the Permissible Building Area as shown on the Site Plan. No  
6 outparcels, barriers, buildings, kiosks or other structures, either temporary or permanent, shall be  
7 located within Tenant's Preferred Area, and no building located on an outparcel in the Shopping  
8 Center including, but not limited to Unit 80 (as shown on the Site Plan), shall exceed the size  
9 necessary for such outparcel to maintain, within its boundaries, the parking ratio required for it to  
10 function as a self-contained unit without use of parking spaces located in the Common Areas.  
11 No development shall occur within the Shopping Center except as shown on the Site Plan.

12 (B) Construction and Alterations. Following the end of the first Lease Year,  
13 no exterior construction and no construction staging shall be permitted in the Tenant's Preferred  
14 Area or on any service roads during the months of October, November and December except for  
15 emergency repairs and interior alterations not affecting the operations of any other occupant of  
16 the Shopping Center. In the event of any construction within the Shopping Center, Landlord  
17 shall designate a construction access route, staging and parking areas located so as to minimize  
18 interference with customers or the operations of other occupants of the Shopping Center and  
19 shall require erection of safety barriers as necessary and an opaque wall around the site of such  
20 construction of a size necessary to screen such construction from ground level view. With regard  
21 to any construction on Landlord's Premises, Landlord shall be solely responsible for any  
22 governmentally imposed impact fees, hookup, connection, installation or tap in fees and other  
23 similar construction-related charges. Other than de minimus changes which do not adversely  
24 affect the Premises or Tenant's Preferred Area, Landlord shall make no changes in Tenant's  
25 Preferred Area as shown on the Site Plan (including, without limitation, changes in the location  
26 of curbcuts, drive aisles, roadways, sidewalks or parking spaces) without Tenant's express  
27 written consent, which Tenant may, in its sole discretion, withhold. With respect to portions of  
28 the Common Areas on the Shopping Center outside of Tenant's Preferred Area, Landlord may  
29 make other changes provided such changes do not materially and adversely affect Tenant's  
30 parking, visibility or access. Any changes which would cause a material adverse effect on

1 Tenant's parking, visibility or access to said Common Areas may be made only upon receipt of  
2 Tenant's express written consent.

3 (C) Prohibited Uses in Common Area. Landlord (as to the Common Areas on  
4 Landlord's Premises and the Tenant's Preferred Area) and Tenant (as to the Common Areas on  
5 the Premises) covenant that they shall not, without the other party's express written consent,  
6 permit the following uses or activities to occur in said Common Areas: (1) advertisements or  
7 signs except for pylon, under canopy and/or monument signs, "for rent" signs, traffic control  
8 signs; (2) display or sale of merchandise (except as otherwise set forth in paragraph 18(c)  
9 above); (3) operation of loudspeakers or other sound electronically amplified so as to be heard in  
10 the Common Areas; (4) imposition of a charge for parking other than the CAM Charge; or (5)  
11 operation of cellular telephone or other telecommunication tower for use by any other party not  
12 an occupant of the Shopping Center. Landlord further covenants that it will not seek, nor permit  
13 any other occupant of the Shopping Center to seek, a variance or waiver from the minimum  
14 parking requirements applicable to the Shopping Center under the zoning code or other  
15 applicable ordinance establishing the ratio of parking spaces to building area or otherwise  
16 mandating the number of parking spaces required for the Shopping Center and the uses contained  
17 therein. If reasonably required in Landlord's opinion, parking by employees of Tenant, Landlord  
18 and other occupants of the Shopping Center shall be designated "employee parking" areas, the  
19 location of which shall be agreed upon by Landlord and Tenant, but in no event shall such  
20 designated areas be within the Tenant's Preferred Area.

21 (D) Easements. Except for occupants of the Shopping Center and the  
22 properties contiguous thereto, Landlord shall not grant any parking easements in the Common  
23 Areas without Tenant's prior written consent.

24 (x) Interference with Tenant's Reception/Transmission. Landlord  
25 shall not install or, to the extent it has the authority to do so, permit to be installed by any other  
26 tenant or other person anywhere in the Shopping Center, any structure or equipment which, to  
27 the best of Landlord's actual knowledge, would cause any interference with satellite, radio,  
28 telecommunications, or television reception or transmission in or from the Building.

29 (xi) Notices Affecting the Premises. Landlord shall promptly forward  
30 to Tenant any notice or other communication affecting the Premises received by Landlord from



1 any owner of property adjoining, adjacent or nearby to the Premises, the Shopping Center or  
2 from any municipal or governmental authority, in connection with any hearing or other  
3 administrative procedure relating to the use or occupancy of the Premises.

4 (xii) Constructive Trust. Landlord covenants that all sums paid by  
5 Tenant to Landlord and intended for payment by Landlord to a third party (such as, by way of  
6 example, taxes and certain elements of CAM Charges) are given to Landlord in trust and shall be  
7 applied only for such third-party payments, as and when due. Tenant acknowledges that  
8 Landlord may commingle such funds with other funds of the Landlord, and Landlord does not  
9 have to maintain a separate accounting therefor, nor pay any interest thereon, to Tenant.

10 (xiii) Absence of Obstructions. To Landlord's knowledge, the Land is  
11 free of any obstructions, foundations or footings, utilities, improvements or tenancies (except for:  
12 the column pads and footers for the adjacent building labeled Unit 90 on the Site Plan, which  
13 partially encroach onto the Land; and the underground electrical conduit serving the pylon sign  
14 for said adjacent building, which conduit shall be relocated to a mutually agreeable location by  
15 Tenant). If in connection with Tenant's construction of the Improvements, Tenant discovers any  
16 obstructions, foundations or footings, utilities or improvements in or on the Land (other than as  
17 set forth above) which Tenant is required to either (A) remove; or (B) leave in place in  
18 connection with its construction of the Improvements, Landlord agrees to reimburse Tenant for  
19 (1) the cost of such removal; and/or (2) the cost to design and install the Improvements in order  
20 to leave the encroachments in place to the extent such cost exceeds \$2,000.00.

21 (b) Tenant's Authority. Tenant represents, warrants and covenants to  
22 Landlord that Tenant is a duly constituted corporation organized under the laws of the  
23 Commonwealth of Virginia; it has the power to enter into this Lease and perform Tenant's  
24 obligations hereunder; and the Vice President executing this Lease on Tenant's behalf has the  
25 right and lawful authority to do so.

26 (c) Additional Remedies. In addition to such other remedies as may be  
27 accorded Tenant at law, in equity (including but not limited to an injunction or writ of specific  
28 performance) or under the terms of this Lease, (i) in the event that any of the representations,  
29 warranties and covenants set forth in paragraphs 19(a)(i), (ii), (iii), (iv), (vii) and (x) are untrue or  
30 incorrect, or (ii) in the event that Tenant suffers any loss, cost, liability or damage as a result of

1 the breach of any of such covenants, representations and warranties, Landlord shall defend,  
2 indemnify and hold Tenant harmless from any of such loss, costs, liability or damage incurred as  
3 a result of Landlord's breach hereunder.

4       20. Estoppel Certificates. Without charge, at any time and from time to time  
5 hereafter (but not more frequently than twice in one year), within thirty (30) days after receipt of  
6 written request by either party, the other party shall certify, by written and duly executed  
7 instrument, to any other entity ("Person") specified in such request: (a) as to whether this Lease  
8 has been supplemented or amended, and, if so, the substance and manner of such supplement or  
9 amendment; (b) as to the validity, force and effect of this Lease, to the certifying party's best  
10 knowledge; (c) as to the existence of any default hereunder, to the certifying party's best  
11 knowledge; (d) as to the existence of any offsets, counterclaims, or defenses hereto on the part of  
12 such other party, to the certifying party's best knowledge; (e) as to the commencement and  
13 expiration dates of the Term; and (f) as to any other matters which may reasonably be so  
14 requested. In addition, without charge, at any time any from time to time hereafter (but not more  
15 frequently than twice a year), within thirty (30) days after receipt of written request of Tenant,  
16 Landlord shall deliver an estoppel certificate to Tenant's assignee or subtenant that states in the  
17 event Tenant defaults under any of its obligations under this Lease following the date of any  
18 assignment or subletting hereunder, Landlord will permit such assignee or subtenant to satisfy  
19 obligations of Tenant hereunder, including but not limited to the direct payment of rentals to  
20 Landlord. Any such certificate may be relied upon by the party requesting it and any Person to  
21 whom the same may be exhibited or delivered, and the contents of such certificate shall be  
22 binding on the party executing same. Any request for any such certificate by Tenant must  
23 contain a reference to this paragraph 20 and the obligation of the applicable party to provide such  
24 certificate.

25       21. Subordination, Non-Disturbance and Attornment. Simultaneously with the  
26 execution hereof, Landlord shall deliver to Tenant with regard to any and all Mortgages (as  
27 defined below) encumbering the Premises and placed thereon by Landlord, a non-disturbance  
28 and attornment agreement substantially in the form of Exhibit "G" hereto attached, executed by  
29 the holder of such Mortgage ("Mortgagee"), as applicable. In addition, throughout the Term,  
30 Landlord shall deliver to Tenant a non-disturbance and attornment agreement substantially in the

1 form of Exhibit "G" executed by Mortgagee with regard to all future Mortgages and with regard  
2 to all renewals, modifications, replacements and extensions of such Mortgages. Such Agreement  
3 shall contain, at a minimum, the following: (i) the Lease shall not terminate simply by reason of  
4 a foreclosure or deed in lieu thereof ("Foreclosure"), (ii) Tenant's possession of the Premises  
5 shall not be disturbed so long as Tenant is not in default under any of the material terms,  
6 covenants or conditions of the Lease, beyond any applicable cure period provided in the Lease,  
7 (iii) the Mortgagee or purchaser upon such Foreclosure shall recognize Tenant and all its rights  
8 hereunder and shall be obligated to fully and completely perform Landlord's duties and  
9 obligations under the Lease arising from and after the date of such Foreclosure, including but not  
10 limited to an obligation to make all payments to Tenant and satisfy all construction obligations  
11 set forth in this Lease, so long as Tenant is not in default under any of the material terms,  
12 covenants or conditions of this Lease, beyond any applicable cure period provided in the Lease,  
13 (iv) Tenant shall not be named as a party in any action for Foreclosure unless required by law,  
14 (v) the Mortgagee, whether or not the Mortgage is foreclosed, shall make all proceeds arising  
15 from a casualty or condemnation loss to the Premises available to Tenant for restoration of the  
16 Improvements in accordance with the terms hereof, and (vi) in the event of a Foreclosure, Tenant  
17 shall attorn to the Mortgagee or any purchaser at the Foreclosure sale. Upon Tenant's receipt of  
18 the non-disturbance and attornment agreement, this Lease shall be subordinate to the Mortgage.  
19 Landlord shall cause any present or future Mortgagee to deliver a non-disturbance and  
20 attornment agreement in accordance with this paragraph 21 at or prior to the time which the lien  
21 of the Mortgage is filed against record title to the Premises. As used in this paragraph 21, the  
22 term "Mortgage" shall mean any mortgage, deed to secure debt, deed of trust, trust deed or other  
23 collateral conveyance of, or lien or encumbrance against, the Premises. In the event of a  
24 Foreclosure of any Mortgage, Tenant shall attorn to a Mortgagee or any purchaser at Foreclosure  
25 of a Mortgage, and Landlord shall be released from all liability with respect to events occurring  
26 from and after the date of such foreclosure. In the event Landlord's interest in the Premises  
27 passes to a successor (the "Successor") by sale, lease, Foreclosure or in any other manner,  
28 provided such successor assumes Landlord's obligations hereunder, Tenant shall be bound to the  
29 Successor under all of the terms of this Lease for the balance of the Term, with the same force  
30 and effect as if the Successor were the initial Landlord under the Lease, and Tenant hereby

1 agrees to attorn to the Successor as its Landlord. Such attornment to be effective upon written  
2 notice thereof given by Landlord to Tenant.

3       22. Tenant's Financing. Notwithstanding any other provisions of this Lease, Tenant  
4 may, without Landlord's consent, from time to time, secure financing or general credit lines and  
5 grant the lenders thereof as security therefor, (i) a security interest in Tenant's trade fixtures,  
6 personalty, inventory and trade equipment (collectively, "Personalty"), (ii) the right to enter the  
7 Premises to realize upon any Personalty so pledged provided that such secured creditor agrees to  
8 pay for any and all damages caused to the Premises in pursuit of its remedies against Tenant,  
9 and/or (iii) a collateral assignment of Tenant's leasehold interest in the Premises, with rights of  
10 reassignment (but in all events subject to the terms of this Lease, with no release of liability on  
11 the part of Tenant or any future holders of Tenant's rights herein); provided, however, such  
12 collateral assignment may be made solely for the purpose of securing Tenant's indebtedness.  
13 Upon Tenant providing notice of such financing to Landlord, Landlord agrees to evidence its  
14 consent in writing to such security interest and agreement and to give such lenders the same  
15 notice and opportunity to cure any default of Tenant as is provided Tenant hereunder. In  
16 addition, Landlord agrees to cause any Mortgagee specifically to acknowledge the rights of  
17 Tenant's lenders described herein and in paragraph 23 below.

18       23. Tenant's Property and Waiver of Landlord's Lien. All of the Personalty shall be  
19 and remain the personal property of Tenant and shall be removable by Tenant any time prior to  
20 the expiration or earlier termination of this Lease. Landlord shall permit Tenant to enter the  
21 Premises for thirty (30) days after the expiration of the Lease to remove its Personalty from the  
22 Premises provided Tenant makes such request at least ninety (90) days prior to the expiration of  
23 this Lease and, upon the expiration of the Lease, pays Landlord all charges that would have been  
24 due Landlord with respect to such thirty (30) day period had the Lease continued through such  
25 additional thirty (30) day period. (A nonexclusive list of Tenant's removable trade fixtures is  
26 attached hereto as Exhibit "D".) Landlord expressly waives its statutory or common law  
27 landlord's liens (as same may be enacted or may exist from time to time) and any and all rights  
28 granted under any present or future laws to levy or distrain for rent (whether in arrears or in  
29 advance) against the aforesaid property of Tenant on the Premises and further agrees to execute  
30 any reasonable instruments evidencing such waiver, at any time or times hereafter upon Tenant's

1 request. In the event Tenant is authorized but fails to remove any and all of its Personalty within  
2 thirty (30) days of the expiration or termination of this Lease or Tenant's right of possession  
3 thereunder, Landlord may remove and take possession of such Personalty, or the balance thereof  
4 and thereafter charge Tenant the reasonable cost of such removal. Those improvements that are  
5 integrated into the physical structure of the Improvements shall not be removed and shall become  
6 property of the Landlord. Tenant agrees to promptly repair any damage to the Improvements  
7 occasioned by the removal of Tenant's trade fixtures, trade furnishings and trade equipment, and  
8 to surrender the Premises in a broom-clean condition and otherwise maintained as contemplated  
9 in Section 10 above. Tenant agrees that at the expiration of this Lease, it will deliver to Landlord  
10 peaceable possession of the Premises.

11 24. Memorandum of Lease: Commencement Date Agreement. Landlord and Tenant  
12 agree, at the other's request and at the sole expense of the requesting party, to execute a  
13 Memorandum of Lease in recordable form, substantially similar to that attached hereto as Exhibit  
14 "H", setting forth such provisions hereof as may be required by State law. In addition, Landlord  
15 and Tenant shall execute a Commencement Date Agreement in the form attached hereto as  
16 Exhibit "T", once the Commencement Date has been established. Recording costs for either or  
17 both documents shall be borne by the party requesting recordation of the same. The provisions  
18 of this Lease shall control, however, with regard to any omissions from, or provisions hereof  
19 which may be in conflict with, the Memorandum of Lease or Commencement Date Agreement.

20 25. Expiration of Term and Holding Over. Should Tenant hold over this Lease shall  
21 continue in force from month to month, subject to all of the provisions hereof and at one hundred  
22 twenty-five percent (125%) of the monthly Base Rent (or Interim Rent, as the case may be)  
23 Tenant had been paying during the preceding Lease Year, plus Tenant shall pay all other charges  
24 contained herein. No holding over by Tenant or acceptance of rent or other charges by Landlord  
25 shall operate as a renewal or extension of the Lease without the written consent of Landlord and  
26 Tenant. During the last year of the Term, Tenant will allow Landlord or its agents, upon  
27 reasonable notice, to show the Premises to prospective tenants, purchasers, or mortgagees during  
28 reasonable business hours provided the same does not interfere with the conduct of Tenant's  
29 business.

1           26. Force Majeure. Except as otherwise specifically contemplated in this Lease or in  
2 the Construction Provisions, in the event that Landlord or Tenant shall be delayed or hindered in,  
3 or prevented from, the performance of any act required hereunder by reason of strikes, lockouts,  
4 labor troubles, inability to procure materials, delay by the other party, failure of power or  
5 unavailability of utilities, riots, insurrection, war or other reason of a like nature not the fault of  
6 such party or not within its control, then performance of such act shall be excused for the period  
7 of delay, and the period for the performance of any such act shall be extended for a period  
8 equivalent to the period of such delay; provided, however, that in connection with the  
9 construction of the Improvements, the consequences of delays by the other party shall be  
10 governed by the Construction Provisions. The provisions of this Lease related to force majeure  
11 shall not operate to excuse Tenant from prompt payment of ground rent, Interim Rent, Base  
12 Rent, additional rent or any other payments required by the terms of this Lease.

13           27. Events of Tenant's Default. Any of the following occurrences, conditions or acts  
14 by Tenant shall constitute an "Event of Default" under this Lease:

15           (a) Failure to Pay Rent: Breach. (i) Tenant's failure to make any payment of  
16 money required by this Lease (including without limitation Base Rent, Interim Rent, CAM  
17 Charges or Real Estate Taxes), within ten (10) days after written notice is given (pursuant to  
18 paragraph 32) from Landlord to Tenant that same is overdue; or (ii) Tenant's failure to observe  
19 or perform any other material provision of this Lease within thirty (30) days after written notice  
20 is given (pursuant to paragraph 32) from Landlord to Tenant specifying such default and  
21 demanding that the same be cured; provided that, if such default is a non-monetary default and  
22 cannot with due diligence be wholly cured within such thirty (30) day period, Tenant shall have  
23 such longer period as is reasonably necessary to cure the default, so long as Tenant proceeds  
24 promptly to commence the cure of same within such thirty (30) day period and diligently  
25 prosecutes the cure to completion. In the case of an emergency, Landlord shall be required to  
26 give only such notice as is reasonable under the circumstances.

27           (b) Bankruptcy. Tenant's adjudication as bankrupt or insolvent, or the  
28 appointment of a receiver, trustee in involuntary bankruptcy or other, similar officer to take  
29 charge of any substantial part of Tenant's property, which proceeding is not dismissed within  
30 one hundred twenty (120) days after it is begun.

1           28. Landlord's Remedies. After the occurrence of an Event of Default by Tenant,  
2 Landlord shall have the right to exercise the following remedies:

3           (a) Continue Lease. Landlord may, at its option, continue this Lease in full  
4 force and effect, without terminating Tenant's right to possession of the Premises, in which event  
5 Landlord shall have the right to collect Base Rent, Interim Rent and all other charges when due.  
6 Landlord shall also have the right, in Landlord's exercise of reasonable efforts to mitigate its  
7 damages (which Landlord hereby agrees to make), at its option, from time to time, without  
8 terminating this Lease or its right to collect Base Rent, Interim Rent and all other charges when  
9 due, to re-enter and/or to relet the Premises, or any part thereof, with legal process, as the agent,  
10 and for the account, of Tenant upon such terms and conditions as Landlord may deem advisable,  
11 in which event the rents received on such reletting shall be applied (i) first to the reasonable and  
12 actual expenses of such reletting and collection, including without limitation necessary  
13 renovation and alterations of the Premises, reasonable and actual attorneys' fees and any  
14 reasonable and actual real estate commissions paid, and (ii) thereafter toward payment of all  
15 sums due or to become due Landlord hereunder. Any such reentry shall not be deemed a  
16 termination of the Lease or an acceptance by Landlord of a surrender thereof with Landlord  
17 retaining the right to collect all rent and all other charges when due. If due to such reletting a  
18 sufficient amount to pay such expenses and sums shall not be realized or secured, then Tenant  
19 shall pay Landlord any such deficiency monthly and Landlord may bring an action therefor for  
20 all present and future monthly deficiencies. Landlord shall not, in any event, be required to pay  
21 Tenant any sums received by Landlord on a reletting of the Premises in excess of the rent  
22 provided in this Lease, but such excess shall reduce any accrued present or future obligations of  
23 Tenant hereunder. Landlord's reentry and reletting of the Premises without termination of this  
24 Lease shall not preclude Landlord from subsequently terminating this Lease as set forth below.  
25 In the event that Tenant does not pay when due any sums due under this Lease, such unpaid  
26 amounts shall bear interest from the due date thereof to the date of payment at the annual rate  
27 (the "Default Rate") equal to four percent (4%) plus the "Prime Rate". In the event such rate is  
28 prohibited by law, unpaid amounts shall bear interest at the maximum rate permitted by law. For  
29 purposes hereof the "Prime Rate" shall be the Prime Rate as set forth from time to time in the  
30 Money Section of The Wall Street Journal, or if such Prime Rate is not ascertainable as

1 aforesaid, Landlord and Tenant shall mutually agree upon a comparable rate as a substitute  
2 therefor.

3 (b) Terminate Lease. Landlord may terminate this Lease by written notice to  
4 Tenant specifying a date therefor, which shall be no sooner than thirty (30) days of Landlord  
5 giving such notice to Tenant in accordance with paragraph 32, and this Lease shall then  
6 terminate on the date so specified as if such date had been originally fixed as the expiration date  
7 of the Term. In the event of such termination, Landlord shall be entitled to recover from Tenant  
8 all of the following:

9 (i) The "worth at the time of the award" (defined below) of any  
10 obligation which has accrued prior to the date of termination; and

11 (ii) The "worth at the time of the award" of the amount by which the  
12 unpaid Base Rent and all other charges which would have accrued after termination until the  
13 time of award exceeds the amount of any sums which Landlord has (or Tenant proves that  
14 Landlord could have) received in mitigation.

15 As used in this paragraph 28(b), the term, "worth at the time of the award", shall be  
16 computed by allowing simple interest at an accrual rate of twelve percent (12%) for past due  
17 obligations, and a discount rate to net present value of ten percent (10%) on anticipated future  
18 obligations, on the amount of the obligations payable on the date of such calculation. In the  
19 event this Lease shall be terminated as provided above, by summary proceedings or otherwise,  
20 Landlord, its agents, servants or representatives may immediately or at any time thereafter  
21 peaceably re-enter and resume possession of the Premises and remove all persons and property  
22 therefrom, by summary dispossession proceedings.

23 (c) Injunctive Relief and Specific Performance. Landlord shall also be  
24 entitled to seek injunctive relief and/or specific performance as a remedy for an Event of Default  
25 by Tenant.

26 (d) Additional Damage. Landlord may also recover from Tenant, and Tenant  
27 shall pay to Landlord upon demand, such reasonable and actual expenses as Landlord may incur  
28 in recovering possession of the Premises, placing the same in good order and condition, and  
29 repairing the same for reletting, and all other reasonable and actual expenses, commissions and  
30 charges incurred by Landlord in exercising any remedy provided herein or as a result of any



1 Event of Default by Tenant hereunder (including, without limitation, its reasonable attorney's  
2 fees), provided that in no event shall Tenant be obligated to compensate Landlord for any  
3 speculative or consequential damages caused by Tenant's failure to perform its obligations under  
4 this Lease.

5 (e) Remedies Are Cumulative. The various rights and remedies reserved to  
6 Landlord herein are cumulative, and Landlord may pursue any and all such rights and remedies  
7 (but no others), whether at the same time or otherwise (to the extent not inconsistent with  
8 specific provisions of this Lease). Notwithstanding anything herein to the contrary, Landlord  
9 expressly waives its right to forcibly dispossess Tenant from the Premises, whether peaceably or  
10 otherwise, without judicial process, such that Landlord shall not be entitled to any "commercial  
11 lockout" or any other provisions of applicable law which permit landlords to dispossess tenants  
12 from commercial properties without the benefit of judicial review.

13 29. Events of Landlord's Default: Tenant's Remedies.

14 (a) Default by Landlord. Any of the following occurrences, conditions or acts  
15 by Landlord shall constitute an "Event of Default": (i) Landlord's failure to make any payments  
16 of money due Tenant or any third party, including but not limited to the payment of the  
17 brokerage commissions pursuant to paragraph 33 hereof, within thirty (30) days after the receipt  
18 of written notice from Tenant that same is overdue (in which event the delinquent amount shall  
19 accrue interest from the due date at the Default Rate); or (ii) Landlord's failure to perform any  
20 nonmonetary obligation of Landlord hereunder within thirty (30) days after receipt of written  
21 notice from Tenant to Landlord specifying such default and demanding that the same be cured;  
22 provided that, if such default cannot with due diligence be wholly cured within such thirty (30)  
23 day period, Landlord shall have such longer period as may be reasonably necessary to cure the  
24 default, so long as Landlord proceeds promptly to commence the cure of same within such thirty  
25 (30) day period and diligently prosecutes the cure to completion and provided further that in the  
26 case of an emergency, Tenant shall be required to give only such notice as is reasonable under  
27 the circumstances.

28 (b) Remedies Upon Landlord's Default. Upon the occurrence of an Event of  
29 Default by Landlord, at Tenant's option, and without its actions being deemed an election of  
30 remedies or a cure of Landlord's default, Tenant may do all or any of the following: (i) provided

1 Tenant has delivered not less than five (5) business days prior written notice of Tenant's intent to  
2 pay or perform the obligation which gave rise to the Event of Default (which notice may be  
3 included in the initial notice of default given to Landlord pursuant to paragraph 29(a) above), pay  
4 or perform such obligations and invoice Landlord the amount of Tenant's actual cost of  
5 performance, including any and all transaction costs and attorneys' fees, plus interest at the  
6 Default Rate, (ii) if such default by Landlord effectively precludes Tenant from profitably  
7 operating its business on the Premises, terminate this Lease and sue for damages, including  
8 interest, transaction costs and attorneys' fees as specified in clause (i) above, (iii) recover from  
9 Landlord damages Tenant incurs as a result of Landlord's default (including, without limitation,  
10 its reasonable attorneys' fees), or (iv) seek injunctive relief and/or specific performance as a  
11 remedy for an Event of Default by Landlord. If Tenant elects its rights under clause (i) of this  
12 paragraph 29(b) and Landlord fails, within thirty (30) days of receipt of such invoice, to  
13 reimburse Tenant for the amounts set forth in the invoice delivered to Landlord pursuant to  
14 clause (i), Tenant may offset the amount of such invoice against the Interim Rent, Base Rent,  
15 CAM Charges and any and all other amounts or charges due Landlord hereunder until such  
16 invoice has been paid in full.

17 Notwithstanding the foregoing paragraph, so long as the Landlord is an affiliate of The  
18 Cafaro Company, Tenant may only exercise its right of offset with respect to costs incurred by  
19 Tenant as a result of Landlord's failure to maintain the Common Areas on Landlord's Premises,  
20 maintain the insurance coverages required hereunder or pay Real Estate Taxes as required  
21 hereunder (unless Landlord has notified Tenant that it is in good faith protesting same and has  
22 provided evidence reasonably satisfactory to Tenant that the Tax Parcel is not in imminent  
23 danger of foreclosure), and may only exercise such offset right if Landlord has not notified  
24 Tenant within thirty (30) days of receipt of Tenant's invoice that Landlord, in good faith,  
25 contests the existence of the default giving rise to the work performed by Tenant or the validity  
26 of the charges set forth in the invoice.

27 In the event Landlord so notifies Tenant, Tenant shall deposit the amount it seeks to  
28 offset against the charges payable to Landlord into a third-party escrow account and initiate a  
29 three arbitrator arbitration proceeding in accordance with the expedited arbitration procedures of  
30 the American Arbitration Association. In the event Tenant prevails in such arbitration, Tenant

1 shall be entitled to a return of the money deposited in escrow. In addition, Landlord shall pay for  
2 the cost of the arbitration, including Tenant's reasonable attorneys' fees incurred in connection  
3 therewith, and Tenant shall be entitled to interest on the amounts deposited in escrow by Tenant  
4 at the Default Rate (reduced by any interest actually earned by such deposit while on deposit  
5 with the third-party escrow agent). If Landlord does not pay such additional amounts within ten  
6 (10) days after a decision in favor of Tenant by the arbitrator, Tenant shall have the additional  
7 right to offset any such additional amounts against future amounts payable by Tenant to  
8 Landlord under this Lease.

9 If Landlord prevails in the arbitration, the escrow agent shall pay the escrow deposit,  
10 together with any interest earned thereon, to Landlord. Tenant shall be obligated to pay the costs  
11 of arbitration, including Landlord's reasonable attorneys' fees, and Landlord shall be entitled to  
12 interest at the Default Rate on the amounts which should have been paid to Landlord under the  
13 Lease. Tenant shall pay all amounts due Landlord within ten (10) days after a decision in favor  
14 of Landlord by the arbitrators. Tenant shall receive a credit against such amounts for any interest  
15 earned on the escrow deposit and paid to Landlord.

16 If Landlord fails to pay Tenant the Lease Incentive Payment in a timely manner, Tenant  
17 shall be entitled to the rights and remedies set forth in this Section 29(b) and the Construction  
18 Provisions; and, as to a breach of the warranties and representations contained in paragraph 19,  
19 Tenant shall be entitled to the remedies provided therein, in addition to those remedies provided  
20 herein. The various rights and remedies reserved to Tenant herein are cumulative, and Tenant  
21 may pursue any and all rights and remedies (but no others), whether at the same time or  
22 otherwise.

23 (c) Exculpation. Notwithstanding anything to the contrary provided in this  
24 Lease, except to the extent Landlord elects to self-insure, the liability of Landlord, its partners,  
25 principals or joint venturers, under this Lease shall be limited to Landlord's interest in the  
26 Shopping Center, including any rents and profits, insurance proceeds and condemnation awards  
27 derived therefrom and further including any consideration received by Landlord, its partners,  
28 principals or joint venturers, from the sale or other disposition of all or any part of the Shopping  
29 Center (with regard to liability arising prior to such sale or disposition). Tenant agrees to look  
30 solely to Landlord's interest in the Shopping Center for satisfaction of any and all claims it may

1 have against Landlord, provided that nothing contained herein shall prevent Tenant from  
2 bringing a suit for specific performance or seeking injunctive relief against Landlord in an  
3 appropriate case, from attaching rents and profits, sale proceeds, insurance or condemnation  
4 awards derived from the Shopping Center, nor limit Tenant's rights to any other action or  
5 remedy (not involving the personal liability of Landlord, its partners, principals or joint  
6 venturers) which may be accorded Tenant by law. Nothing contained herein shall be deemed a  
7 waiver of any default by Landlord nor an assumption by Tenant of any liability of Landlord, its  
8 partners, principals or joint venturers.

9 (d) Time is of the Essence. Notwithstanding anything contained herein to the  
10 contrary, Landlord covenants that it shall complete its delivery obligations in accordance with  
11 Section 1 of the Construction Provisions. In the event that Landlord fails to complete its delivery  
12 obligations in accordance with Section 1 of the Construction Provisions, Tenant may, at its sole  
13 election, exercise such remedies as are set forth herein.

14 30. Waiver. If either Landlord or Tenant fails to insist on the strict observance by the  
15 other of any provisions of this Lease, neither shall thereby be precluded from enforcing nor be  
16 held to have waived any of the obligations, past, present or future, of this Lease. Either party  
17 may accept late payment or performance by the other without waiving any Event of Default  
18 which may then have accrued.

19 31. Compliance with Applicable Laws. During the Term, Landlord and Tenant shall  
20 comply in accordance with paragraph 10 of this Lease with all lawful requirements of the local,  
21 county and state health boards, police and fire departments, municipal and state authorities and  
22 any other governmental authorities with jurisdiction over the Improvements, and of the board of  
23 fire underwriters, respecting Tenant's use and occupancy of the Improvements. In the event that  
24 Tenant, within thirty (30) prior days' written notice (except in the case of an emergency, in  
25 which event only such notice as is reasonable under the circumstances shall be required) from  
26 Landlord or any such authority ordering performance of any such work which Tenant is required  
27 to perform in order to remain in, or come into, compliance with any such requirement, fails to  
28 perform or diligently commence performance of same with reasonable promptness, Landlord  
29 may perform said work and collect the reasonable cost thereof plus interest at the Default Rate  
30 from Tenant with the next installment or installments of Base Rent. In the event that Landlord,

1 within thirty (30) prior days' written notice (except in the case of an emergency, in which event  
2 only such notice as is reasonable under the circumstances shall be required) from Tenant or any  
3 such authority ordering performance of any such work which Landlord is required to perform in  
4 order to remain in, or come into, compliance with any such requirement, fails to perform or  
5 diligently commence performance of same with reasonable promptness, Tenant may perform  
6 said work and deduct the reasonable cost thereof plus interest at the Default Rate from Landlord  
7 with the next installment or installments of Base Rent.

8 32. Notices. Any notice permitted or required to be given pursuant to this Lease shall  
9 be deemed to have been given three (3) business days after mailing a written notice by certified  
10 mail, postage prepaid, return receipt requested, or one (1) business day after sending by Federal  
11 Express or other comparable overnight express courier service (with proof of receipt available),  
12 addressed to the parties as follows:

13  
14 If to Tenant: CIRCUIT CITY STORES, INC.  
15 Deep Run I  
16 9950 Mayland Drive  
17 Richmond, Virginia 23233  
18 Attention: Corporate Secretary

19 with a copy to: CIRCUIT CITY STORES, INC.  
20 Deep Run I  
21 9950 Mayland Drive  
22 Richmond, Virginia 23233  
23 Attention: Vice President of Real Estate

24 If to Landlord: HOWLAND COMMONS PARTNERSHIP  
25 2445 Belmont Avenue  
26 P. O. Box 2186  
27 Youngstown, Ohio 44504-0186  
28 Attention: Legal Department

29 or to such other addressees as any party hereto shall from time to time give notice to the other  
30 party in accordance with this paragraph.

31 All payments required under this Lease to be paid to Landlord shall be delivered to  
32 Landlord, in its name, at P.O. Box 714090, Columbus, Ohio 43271-4090, or to such other  
33 address as Landlord may designate by written notice, except any payment containing a  
34 conspicuous statement to the effect that the payment is being tendered as full satisfaction of any

1 obligation owed by Tenant to Landlord under this Lease. Any payment bearing a conspicuous  
2 statement to the effect that the payment is being tendered as full satisfaction, such as "payment in  
3 full" or the like, shall be delivered to Landlord, in its name, at 2445 Belmont Avenue, P. O. Box  
4 2186, Youngstown, Ohio 44504-0186, Attention: Credit and Collections Manager. Tenant  
5 agrees that acceptance by Landlord of any payment containing such language shall not preclude  
6 Landlord from collecting the full amount rightfully owed to it under the terms of the Lease.  
7 Payment shall be deemed delivered when same are actually received by Landlord.

8 33. Brokers. Landlord and Tenant each covenant that they have not dealt with any  
9 real estate broker or finder with respect to this Lease, except for Millenium Retail Partners, LLC  
10 and Creative Realty Group, which the parties agree and acknowledge represents Tenant only,  
11 and which shall be paid an aggregate commission by Landlord (payable to Creative Realty  
12 Group) of \$3.00 per square foot of ground floor building area pursuant to their separate written  
13 agreement. Landlord agrees that said brokers are representing Tenant with respect to this leasing  
14 transaction, and, although Landlord is responsible for payment of said commission, said brokers  
15 owe no fiduciary's, agent's or other duty whatsoever to Landlord. Except for the foregoing, each  
16 party shall hold the other party harmless from all damages, claims, liabilities or expenses,  
17 including reasonable and actual attorneys' fees (through all levels of proceedings), resulting from  
18 any claims that may be asserted against the other party by any real estate broker or finder with  
19 whom the indemnifying party either has or is purported to have dealt.

20 34. Miscellaneous.

21 (a) Headings and Gender. All paragraph headings, titles or captions contained  
22 in this Lease are for convenience only and shall not be deemed a part of this Lease and shall not  
23 in any way limit or amplify the terms and provisions of this Lease. The masculine, feminine or  
24 neuter gender and the singular or plural number shall be deemed to include the others whenever  
25 the context so requires or indicates.

26 (b) Construction. The parties hereto agree that all the provisions hereof are to  
27 be construed as covenants and agreements as though the words importing such covenants and  
28 agreements were used in each separate paragraph hereof.

29 (c) Waiver of Jury Trial. In the event of any court action arising out of this  
30 Lease, each party hereby expressly waives its right to trial by jury.

1 (d) Relationship of Landlord-Tenant. Nothing contained in this Lease shall be  
2 deemed or construed by the parties hereto or by any third person to create the relationship of  
3 principal and agent, partnership, joint venture, or any other association between Landlord and  
4 Tenant other than the landlord-tenant relationship described herein.

5 (e) Entire Agreement; Merger. This Lease, including all exhibits hereto  
6 (which are hereby incorporated herein by reference for all purposes), contains the full and final  
7 agreement of every kind and nature whatsoever between the parties hereto concerning the subject  
8 matter of this Lease, and all preliminary negotiations and agreements of whatsoever kind or  
9 nature between Landlord and Tenant are merged herein. This Lease cannot be changed or  
10 modified in any manner other than by a written amendment or modification executed by  
11 Landlord and Tenant.

12 (f) Attorneys' Fees. In the event either party shall be required to commence  
13 or defend any action or proceeding against any other party by reason of any breach or claimed  
14 breach of any provision of this Lease, to commence or defend any action or proceeding in any  
15 way connected with this Lease or to seek a judicial declaration of rights under this Lease, the  
16 party prevailing in such action or proceeding shall be entitled to recover from or to be  
17 reimbursed by the other party for the prevailing party's reasonable and actual attorneys' fees and  
18 costs through all levels of proceedings.

19 (g) Partial Invalidity. If any provision of this Lease or the application thereof  
20 to any person or circumstance shall be deemed invalid or unenforceable, the remainder of this  
21 Lease and its application to other persons or circumstances shall not be affected by such partial  
22 invalidity but shall be enforced to the fullest extent permitted by law as though such invalid or  
23 unenforceable provision was never a part hereof.

24 (h) Consents. Any consent or approval granted by either party hereunder shall  
25 be deemed a consent only as to the matter on which such consent was requested and shall not  
26 waive the consenting party's right to give or withhold consent to any subsequent matter.

27 (i) Holidays. If the day on which rent or any other payment due hereunder is  
28 payable falls on a Saturday, Sunday or on a legal holiday, it shall be payable on the following  
29 business day.

1 (j) Applicable Law. This Lease shall be construed in accordance with the  
2 laws of the State, and the parties agree that jurisdiction for all actions hereunder shall lie therein.

3 (k) Successors and Assigns. All rights, obligations and liabilities herein given  
4 to or imposed upon any party hereto shall extend to the permitted successors and assigns of such  
5 party.

6 (l) Counterparts. This Lease may be executed in one or more identical  
7 counterparts, and as so executed by all parties hereto shall constitute a single instrument for  
8 purposes of the effectiveness of this Lease.

9 (m) Trademarks and Trade Names. All trademarks, trade names, service  
10 marks, signs and all other marks of identification used by Tenant in its business shall at all times  
11 remain the exclusive property of Tenant, and Landlord shall have no right, interest in, or title to  
12 any of Tenant's trademarks, trade names, service marks, signs or other marks of identification.

13 (n) Exhibits. All of the Exhibits to this Lease are incorporated by reference  
14 for all purposes and are part of this Lease.

15 (o) No Construction Against Either Party. This Agreement shall be  
16 interpreted to give it fair meaning and shall not be construed against either party.

17 35. Construction, Operation and Reciprocal Easement Agreement. This Lease is  
18 subject and subordinate to the REA provided, that if there is any inconsistency between the REA  
19 and the Lease, as between Landlord and Tenant, the Lease shall control. The provisions of this  
20 clause shall be self-operative; however, Tenant, upon by request of any party in interest, shall  
21 execute promptly such agreements or instruments to effectuate the intent of this clause.  
22 Landlord agrees that, without first obtaining Tenant's prior written consent, it shall not amend or  
23 modify the REA in any manner which adversely affects Tenant's rights or obligations with  
24 respect to the Shopping Center.

25 Further, Landlord reserves the right to sever the ownership of or title to the various  
26 sections of the Shopping Center and/or to place separate mortgages on said sections, in which  
27 case the rights of Tenant, including, but not limited to, Tenant's rights under Section 29 hereof  
28 will be preserved by a written declaration approved by Tenant, which approval shall not be  
29 unreasonably withheld, delayed, or conditioned, to be executed by the Landlord and duly  
30 recorded, creating mutual, reciprocal and interdependent rights to use the parking and other



1 Areas and the utilities and facilities needed for the full use and enjoyment of the Tenant and  
2 without impairing any of the duties and obligations of the Landlord to Tenant under this Lease.  
3 Tenant covenants to execute from time to time such instruments reasonably required by Landlord  
4 and/or its Mortgagee to effectuate the provisions of this clause. Landlord covenants to reimburse  
5 Tenant for all legal fees and other costs incurred by Tenant in connection with effectuating the  
6 provisions of this clause.

7 36. Confidentiality. The parties hereto, including, but not limited to, their heirs,  
8 successors, assigns and legal representatives, agree that this Lease may not be recorded and that  
9 all such parties hereby agree to use their best reasonable efforts to preserve the confidentiality of  
10 this transaction. This confidentiality agreement extends to any developers, bankers, lawyers,  
11 accountants, employees, agents or any other persons acting on behalf of the parties hereto. Any  
12 breach of this confidentiality agreement shall constitute an automatic Event of Default without  
13 notice or cure provided, for which either party may recover damages as their sole remedy and for  
14 which neither party can terminate this Lease. Notwithstanding the foregoing, Landlord shall  
15 have the right to make such disclosures regarding this Lease as are reasonably required in  
16 connection with the sale of the Shopping Center, the financing or refinancing of the Shopping  
17 Center, a governmental or judicial order or mandate, litigation, a condemnation proceeding, or to  
18 an insurance carrier or broker, tax consultant or other party which customarily requires access to  
19 such information and Tenant shall have the right to make such disclosures regarding this Lease  
20 as are reasonably required in connection with any financing arrangements, a governmental or  
21 judicial order or mandate, litigation, a condemnation proceeding, or to an insurance carrier or  
22 broker, tax consultant or other party which customarily requires access to such information.

23 37. Recapture Right/Failure to Operate. If Tenant fails, for a period of three hundred  
24 sixty-five (365) consecutive days, to be open for business in the Premises (excluding a closing  
25 due to a casualty, condemnation or force majeure) Landlord shall have the right to terminate this  
26 Lease at any time after the expiration of such one (1) year period and prior to Tenant reopening  
27 for business, by delivery to Tenant of notice that the Lease shall terminate if Tenant does not  
28 reopen for business within ninety (90) days of receipt of such notice; provided, however, such  
29 notice shall be deemed to be null and void and no force and effect if, following receipt thereof  
30 and prior to the expiration of such ninety (90) day period, Tenant either (i) reopens its business

1 fully stocked, fixtured and staffed or (ii) delivers evidence (in the form of at least a mutually  
2 executed memorandum of such agreement setting forth a summary thereof) to Landlord that  
3 Tenant has entered into a bona fide assignment or sublet of the Premises and such assignee or  
4 sublessee subsequently opens its business fully stocked, fixtured and staffed within one-hundred  
5 eighty (180) days of the date of such assignment or sublet. If Landlord does so terminate this  
6 Lease, Landlord shall reimburse to Tenant all of Tenant's unamortized costs of its improvements  
7 (including, without limitation tenant improvements and fixtures [other than removable trade  
8 fixtures], but excluding inventory) to the Premises which have not been previously reimbursed to  
9 Tenant or included in the Lease Incentive Payment. For purposes of calculating Tenant's  
10 unamortized cost of an improvement to the Premises Tenant shall utilize an amortization period  
11 equal to the lesser of (i) the remainder of Term (including all previously exercised option  
12 Periods) when the improvement was put in service or (ii) the useful life of the applicable  
13 improvement as determined for Tenant's federal income tax purposes. The parties hereby agree  
14 that the provisions of the preceding two (2) sentences shall survive the termination of this Lease.

15 38. Landlord's Representation Regarding Adjacent Building. Landlord hereby  
16 represents that the building adjacent to Tenant and labeled Unit 90 on the Site Plan is currently  
17 leased to Gander Mountain, LLC, and that said Lease has a natural expiration date of July 31,  
18 2014 (plus three [3] five-[5]-year option terms). In the event that Landlord should elect to lease  
19 all (or any portion contiguous to Tenant's Building) of said Unit 90 during the Term of this  
20 Lease, Landlord shall use commercially reasonable efforts to offer to lease same to Tenant upon  
21 at least the same terms and conditions as any bona fide offer available to Landlord at such time.  
22 In the event that Landlord shall fail to meet its obligation as set forth in the foregoing sentence,  
23 Tenant shall have no remedy against Landlord for such failure, unless it can be conclusively  
24 proven that Landlord has acted in bad faith in its failure to comply with said obligation.

25 39. Cotenancy. If less than three (3) Anchor Stores are open for business for sixty  
26 (60) consecutive days or longer during the Main Term of this Lease, then as of said sixtieth  
27 (60<sup>th</sup>) day, such condition shall be deemed a "Cotenancy Deficiency", subject to the limitations  
28 set forth herein.

1       Upon the occurrence of a Cotenancy Deficiency, Tenant shall have the right, exercisable  
2       within ninety (90) days following such occurrence, to terminate this Lease by tendering written  
3       notice to Landlord of its intention to so terminate, provided, however, that if Tenant has not  
4       given written notice to Landlord of its intent to exercise said right to terminate within said ninety  
5       (90) day period, Tenant's right to terminate shall continue, as shall its tenancy hereunder, until  
6       thirty (30) days after Landlord has given Tenant written demand that Tenant exercise said  
7       termination right within said thirty (30) day period or forfeit its right to do so. Should Tenant  
8       elect to exercise said termination right within said thirty (30) day period, the Lease shall be  
9       terminated as if Tenant had given such notice within the original ninety (90) day period stated  
10      above. Should Tenant fail to exercise said termination right within said thirty (30) day period,  
11      the Lease shall continue in full force and effect, except that this Section 39 shall thereafter be  
12      deemed void. In the event that Tenant shall terminate this Lease as set forth in this Section 39,  
13      such termination shall be effective one hundred eighty (180) days after Landlord's receipt of  
14      Tenant's notice thereof, and upon such termination date, Tenant shall return possession of the  
15      Premises to Landlord in accordance with the terms of this Lease. Notwithstanding the foregoing,  
16      if Tenant shall properly exercise its right to terminate this Lease as set forth in this Section 39,  
17      such termination shall be deemed ineffective in the event that Landlord cures the Cotenancy  
18      Deficiency which gave rise to such termination no later than the nintienth (90<sup>th</sup>) day of said one  
19      hundred eighty (180) day period, in which case the Lease shall continue in full force and effect  
20      as if such termination notice had not been given.

21      Notwithstanding any provision herein to the contrary, a Cotenancy Deficiency shall not  
22      be deemed to occur if: (i) the Tenant is in default of this Lease; (ii) the Main Term has been  
23      renewed or extended (in accordance with the terms of Section 3 of this Lease or otherwise); (iii)  
24      the Lease has been assigned (by operation of law or otherwise); (iv) the entirety of the Premises  
25      or any substantial portion thereof has been sublet; or (v) Tenant has ceased the operation of its  
26      business in the Premises (except if there are less than five [5] Anchor Stores open for business on  
27      the date Tenant ceases operation of its business in the Premises, in which case Tenant shall retain  
28      its right to terminate this Lease as set forth in this Section 39). For the purposes of this Section  
29      39, no Anchor Store or Anchor Stores referred to in the first paragraph hereof shall be deemed to  
30      be closed if such closure represents a temporary cessation of business due to fire or other

1 casualty, eminent domain, remodeling, inventory, transition period attributable to assignment or  
2 acquisition, or any "force majeure" event.

3 For the purposes of this Section 39, "Anchor Store" is defined as any of the six (6) single  
4 retail premises located on the Shopping Center which are occupied as of the date of this Lease by  
5 Borders Books, Gander Mountain, Kohl's, Linens N Things, Office Depot and Super Kmart, plus  
6 the single retail premises located on that portion of the Adjacent Center known as North  
7 Commons which is occupied as of the date of this Lease by Home Depot, as well as any  
8 replacement occupants therefor operating in at least twenty-four thousand (24,000) square feet.  
9 Notwithstanding the foregoing, in the event that the single retail premises occupied by Super  
10 Kmart as of the date of this Lease shall be subdivided at any time during the Main Term such  
11 that it shall contain at least two (2) occupants operating in at least twenty-four thousand (24,000)  
12 square feet, for the purposes of this Section 39, such premises may be counted as no more than  
13 two (2) Anchor Stores, such that the aggregate number of Anchor Stores located within the  
14 Shopping Center and North Commons may not be more than eight (8).

1

2. WITNESS the following signatures and seals:

WITNESS:

Susan T. Mirich  
Joseph W. Smith

LANDLORD

HOWLAND COMMONS PARTNERSHIP,  
An Ohio General Partnership

By:

Name: Anthony M. Cafaro

Title: Authorized Agent

TENANT

WITNESS:

Amber H. Royster  
Kari C. Overly

By:

Name:

Title:

Thomas C. Nolan  
Vice-President  
Real Estate

3

4 STATE OF OHIO )  
5 ) SS:  
6 COUNTY OF MAHONING )

7 Personally appeared before me, the undersigned, a Notary Public in and for said County  
8 and State, Anthony M. Cafaro, known to me to be the Authorized Agent of HOWLAND  
9 COMMONS PARTNERSHIP, the Partnership, which executed the foregoing document, who  
10 acknowledged that he did sign the foregoing instrument for and on behalf of said Partnership,  
11 being thereunto duly authorized; that the same is his free act and deed as such Authorized Agent  
12 and the free act and deed of said Partnership.

13 IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at  
14 Youngstown, Ohio, this 5th day of January, 2004.

15

Susan T. Mirich  
Notary Public

**SUSAN T. MIRICH**  
Notary Public, State of Ohio  
My Commission Expires February 15, 2004

**EXHIBIT 'F'**

**COMMENCEMENT DATE AGREEMENT**

THIS COMMENCEMENT DATE AGREEMENT, made as of this 7th day of March, 2005, between HOWLAND COMMONS PARTNERSHIP (herein called "Landlord"), and CIRCUIT CITY STORES, INC., (herein called "Tenant").

**WITNESSETH:**

WHEREAS, Landlord is the owner of certain premises situated in Howland Township, Trumbull county, Ohio (herein called the "Premises"); and

WHEREAS, by that certain Lease dated January 5, 2004 (herein called the "Lease"), Landlord leased the Premises to Tenant; and

~~WHEREAS, a memorandum or short form lease in respect of the Lease was recorded in the office of the recorder of deeds of \_\_\_\_\_ County, \_\_\_\_\_, on \_\_\_\_\_, 20 \_\_\_\_\_, in book \_\_\_\_\_ at page \_\_\_\_\_, and~~

WHEREAS, Tenant is in possession of the Premises and the term of the Lease has commenced; and

WHEREAS, under Paragraph 24 of the Lease, Landlord and Tenant agreed to enter into an agreement setting forth certain information in respect of the Premises and the Lease;

NOW, THEREFORE, Landlord and Tenant agree as follows:

1. The term of the Lease commenced on, and the Commencement Date (as such term is defined in the Lease) was July 2, 04. The term of the Lease shall expire on January 31, 2020 unless Tenant exercises any option to extend the term of the Lease or unless the Lease terminates earlier as provided in the Lease.
2. The date of commencement of the first "Option Period" (as such term is defined in the Lease) shall be February 1, 2020 if Tenant effectively exercises its option in respect thereof, and if Tenant does so, the term of the Lease shall expire on January 31, 2025 unless Tenant exercises any option to further extend the term of the Lease or the Lease terminates earlier as provided in the Lease.
3. The date of commencement of the second Option Period shall be February 1, 2025 if Tenant effectively exercises its option in respect thereof, and if Tenant does so, the term of the Lease shall expire on January 31, 2030 unless Tenant exercises any option to further extend the term of the Lease or the Lease terminates earlier as provided in the Lease.

4. The date of commencement of the third Option Period shall be February 1, 2030 if Tenant effectively exercises its option in respect thereof, and if Tenant does so, the term of the Lease shall expire on January 31, 2035 unless Tenant exercises any option to further extend the term of the Lease or the Lease terminates earlier as provided in the Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

LANDLORD

HOWLAND COMMONS PARTNERSHP

By: Timothy S. Cressine  
Authorized Agent

TENANT;

CIRCUIT CITY STORS, INC.

A Virginia corporation

By: Michael F. Foss  
Michael F. Foss, Executive Vice President  
And Chief Financial Officer